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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/590,452	04/24/2007	Max D. Woodhams	PTB-5091-7	6735

23117 7590 12/01/2008  
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EXAMINER
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PICO, ERIC E

ART UNIT	PAPER NUMBER
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3654

MAIL DATE	DELIVERY MODE
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12/01/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/590,452	WOODHAMS ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	ERIC PICO	3654	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 21 August 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 7,8,10,12 and 13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 7,8,10,12 and 13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>08/21/2008</u> .  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. **Claim(s) 7, 8, 10, 12, and 13** is/are rejected under 35 U.S.C. 103(a) as being unpatentable over Vroegindewelj et al. NL Publication No. 1020911 in view of Forbes U.S. Patent No. 1237627.

3. **Regarding claim 7**, Vroegindewelj et al. discloses a method of providing a stairlift installation on a staircase 2 having a first step 6 having a level above a floor 10 from which the staircase 2 extends, comprising:

4. providing a rail 3 having a main section arranged at the angle of the staircase 2 and a lower section, shown as the lower most section of rail 3, extending from the main section, the lower section terminates substantially on the first step 6;

5. providing a carriage 7 mounted on the rail 3 for movement along both said main section and said lower section;

6. providing a footrest mounted on the carriage 7 for displacement with the carriage 7; and

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7. constructing and arranging the rail 3 and the carriage 7 to ensure that, when the carriage 7 is at a lower most position on the lower section of the rail 3, the footrest is positioned below the first step level 6.

8. Vroegindewelj et al. is silent concerning the lower section curving downwardly from the main section.

9. Forbes teaches a method of providing a stairlift installation on a staircase 11 having a first step 33 having a level above a floor 13 from which the staircase 11 extends, comprising:

10. providing a rail 10 having a main section arranged at the angle of the staircase 11 and a lower section extending from the main section, the lower section curving downwardly from the main section to terminate substantially on the floor 13;

11. providing a carriage 32 mounted on the rail 10 for movement along both said main section and said lower section.

12. It would have been obvious to one of ordinary skill in the art at the time of the invention to angle a lower section downwardly as taught by Forbes with respect to the main section disclosed by Vroegindewelj et al. to provide a rounded termination to the rail end to provide a form that will harmonize with the stairways of houses.

13. **Regarding claim 8**, Vroegindewelj et al. discloses a stairlift for use on a staircase 2 having a first step 6 having a level above a floor 10 from which the staircase 2 extends, the stairlift comprising:

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14. a rail 3 having a main section arranged at the angle of the staircase 2 and a lower section, shown as the lower most section of rail 3, extending from the main section, the lower section terminates substantially on the first step 6;

15. a carriage 7 mounted on the rail 3 for movement along both said main section and said lower section; and

16. a footrest mounted on the carriage 7 for displacement with the carriage 7;

17. the rail 3 and carriage 7 being constructed and arranged such that, when the carriage is at a lower most position on the lower section of the rail 3, the footrest is positioned below the first step level 6.

18. Vroegindewelj et al. is silent concerning a lower section extending from the main section, the lower section curving downwardly from the main section.

19. Forbes teaches a stairlift for use on a staircase 11 having a first step 33 having a level above a floor 13 from which the staircase 11 extends, the stairlift comprising:

20. a rail 10 having a main section arranged at the angle of the staircase 11 and a lower section extending from the main section, the lower section curving downwardly from the main section to terminate substantially on the floor 13;

21. a carriage 32 mounted on the rail 10 for movement along both said main section and said lower section.

22. It would have been obvious to one of ordinary skill in the art at the time of the invention to angle a lower section downwardly as taught by Forbes with respect to the main section disclosed by Vroegindewelj et al. to provide a rounded termination to the rail end to provide a form that will harmonize with the stairways of houses.

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23. **Regarding claim 10**, Vroegindewelj et al. is silent concerning the lower section is substantially vertical.

24. Forbes teaches the lower section is substantially vertical.

25. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide a lower section which is substantially vertical as taught by Forbes to the main section disclosed by Vroegindewelj et al. to provide a rounded termination to the rail end to provide a form that will harmonize with the stairways of houses.

26. **Regarding claim 12 and 13**, Vroegindewelj et al. discloses in which the rail 3 comprises a single longitudinal member.

### ***Response to Arguments***

27. Applicant's arguments filed 08/21/2008 have been fully considered but they are not persuasive.

28. In response to applicant's argument that there is nothing in the prior art to suggest combining Vroegindewelj et al. NL Publication No. 1020911 in view of Forbes U.S. Patent No. 1237627. The examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. Firstly, it should be noted that there is no requirement that an express, written suggestion to combine must appear in prior art references before a finding of obviousness. In addition to the teachings of the references themselves, the

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suggestion to combine references may be found in the nature of the problem to be solved or the knowledge of persons of ordinary skill in the art. Furthermore, while there must be a motivation to make the claimed invention, there is no requirement that the prior art provide the same reason as the applicant to make the claimed invention. In this case, the suggestion to combine Vroegindewelj et al. in view of Forbes comes from the teachings of Forbes U.S. Patent No. 1237627 to provide a movable stairway in a form that will harmonize with the stairways of private houses.

29. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

30. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric Pico whose telephone number is 571-272-5589.

The examiner can normally be reached on 6:30AM - 3:00PM M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Cuomo can be reached on 571-272-6856. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

EEP

/Peter M. Cuomo/

Supervisory Patent Examiner, Art Unit 3654